

Apr 11, 2018

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ROSEBUD KINDRICK,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

NO: 1:16-CV-03195-FVS

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT AND DENYING  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment. ECF Nos. 14 and 16. This matter was submitted for consideration without oral argument. The plaintiff is represented by Attorney D. James Tree. The defendant is represented by Special Assistant United States Attorney Leisa Wolf. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the

1 court **GRANTS** Defendant's Motion for Summary Judgment, ECF No. 16, and  
2 **DENIES** Plaintiff's Motion for Summary Judgment, ECF No. 14.

### 3 **JURISDICTION**

4 Plaintiff Rosebud Kindrick protectively filed for supplemental security  
5 income and disability insurance benefits on October 2, 2009, alleging an onset date  
6 of April 23, 1998. Tr. 247-57. Benefits were denied initially (Tr. 117-31) and  
7 upon reconsideration (Tr. 133-43). Plaintiff requested a hearing before an  
8 administrative law judge ("ALJ"), which was held before ALJ Dan R. Hyatt on  
9 February 2, 2012. Tr. 42-62. Plaintiff was represented by counsel and testified at  
10 the hearing. *Id.* The ALJ denied benefits (Tr. 90-110); but on February 28, 2014,  
11 the Appeals Council vacated the decision and remanded the case for further  
12 proceedings (Tr. 111-16). Plaintiff subsequently appeared for a hearing before  
13 ALJ Rudolph Murgo on February 12, 2015. Tr. 63-85. Plaintiff was represented  
14 by counsel and testified at the hearing. *Id.* The ALJ denied benefits (Tr. 19-41),  
15 and the Appeals Council denied review. Tr. 1. The matter is now before this court  
16 pursuant to 42 U.S.C. §§ 405(g); 1383(c)(3).

### 17 **BACKGROUND**

18 The facts of the case are set forth in the administrative hearing and  
19 transcripts, the ALJ's decision, and the briefs of Plaintiff and the Commissioner,  
20 and will therefore only the most pertinent facts are summarized here.

1           Rosebud Kindrick (“Plaintiff”) was 39 years old at the time of the hearing.  
2 Tr. 66. She testified that she finished the eleventh grade. Tr. 68. Plaintiff lives  
3 with her ex-husband, who works outside the home, and her 13 year old son. Tr.  
4 68-69. Plaintiff has no work history, and has never worked full time. Tr. 71. At  
5 the time of the hearing, Plaintiff testified that she makes \$225 dollars a month  
6 cleaning her church and a house. Tr. 70. She testified that she has no trouble  
7 walking, lifting, or sitting; and she takes medication for anxiety when she is going  
8 to be around people. Tr. 73-74. As to activities, Plaintiff testified that she goes to  
9 church and Bible study several times a week, works in the yard, cooks, shops, does  
10 dishes and laundry, cleans, reads the Bible, plays board games, and takes walks.  
11 Tr. 74-78.

12           Plaintiff alleges disability due to mental health impairments. *See* Tr. 117,  
13 138. As noted by the ALJ, and reflected in the longitudinal record, Plaintiff  
14 presents a medical history significant for drug and alcohol abuse, schizoaffective  
15 disorder, anxiety disorder, and bipolar disorder. Tr. 26. Despite alleging an onset  
16 date in the 1990’s, records show minimal treatment until 2007, and most  
17 consistently from 2009-2012. Tr. 26-27. During this time, Plaintiff was  
18 diagnosed, at varying points, with schizoaffective disorder, social phobia, alcohol  
19 abuse, depressive disorder, social anxiety disorder; and mental health providers  
20 opined, respectively, that she would have marked to severe limitations in learning

1 new tasks and remembering complex instructions; social interactions with  
2 coworkers and the general public; and maintaining appropriate behavior in the  
3 workplace. Tr. 27-29 (citing Tr. 367-68, 373, 456-57, 675-76, 683).

4 Records during this same period also show consistent and ongoing substance  
5 abuse; according to Plaintiff's own reports, medical opinion evidence, and  
6 treatment records. Tr. 27, 46, 372-74, 378, 464, 479-80, 503, 529, 572-74, 675,  
7 688-89, 692-93, 696-99, 702, 705, 713, 719-20, 728, 739-40, 752, 776-77.

8 However, Plaintiff testified at the February 12, 2015 hearing that she had been  
9 sober since October 29, 2013. Tr. 78. She also reported she does not go to  
10 treatment; and had not received mental health treatment since 2012, aside from two  
11 visits to a mental health provider in the six months before the hearing. Tr. 78-80.  
12 Upon questioning by the ALJ, Plaintiff testified that "she [didn't] see why [she]  
13 couldn't" work full time if she didn't have to be around "a bunch of people." Tr.  
14 80-81.

## 15 STANDARD OF REVIEW

16 A district court's review of a final decision of the Commissioner of Social  
17 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is  
18 limited; the Commissioner's decision will be disturbed "only if it is not supported  
19 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,  
20 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a

1 reasonable mind might accept as adequate to support a conclusion.” *Id.* at 1159  
2 (quotation and citation omitted). Stated differently, substantial evidence equates to  
3 “more than a mere scintilla[,] but less than a preponderance.” *Id.* (quotation and  
4 citation omitted). In determining whether the standard has been satisfied, a  
5 reviewing court must consider the entire record as a whole rather than searching  
6 for supporting evidence in isolation. *Id.*

7 In reviewing a denial of benefits, a district court may not substitute its  
8 judgment for that of the Commissioner. If the evidence in the record “is  
9 susceptible to more than one rational interpretation, [the court] must uphold the  
10 ALJ’s findings if they are supported by inferences reasonably drawn from the  
11 record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district  
12 court “may not reverse an ALJ’s decision on account of an error that is harmless.”  
13 *Id.* An error is harmless “where it is inconsequential to the [ALJ’s] ultimate  
14 nondisability determination.” *Id.* at 1115 (quotation and citation omitted). The  
15 party appealing the ALJ’s decision generally bears the burden of establishing that  
16 it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

## 17 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

18 A claimant must satisfy two conditions to be considered “disabled” within  
19 the meaning of the Social Security Act. First, the claimant must be “unable to  
20 engage in any substantial gainful activity by reason of any medically determinable

1 physical or mental impairment which can be expected to result in death or which  
2 has lasted or can be expected to last for a continuous period of not less than twelve  
3 months.” 42 U.S.C. §§ 423(d)(1)(A); 1382c(a)(3)(A). Second, the claimant’s  
4 impairment must be “of such severity that she is not only unable to do his previous  
5 work[,] but cannot, considering [his or her] age, education, and work experience,  
6 engage in any other kind of substantial gainful work which exists in the national  
7 economy.” 42 U.S.C. §§ 423(d)(2)(A); 1382c(a)(3)(B).

8       The Commissioner has established a five-step sequential analysis to  
9 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§  
10 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner  
11 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);  
12 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the  
13 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
14 404.1520(b); 416.920(b).

15       If the claimant is not engaged in substantial gainful activity, the analysis  
16 proceeds to step two. At this step, the Commissioner considers the severity of the  
17 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the  
18 claimant suffers from “any impairment or combination of impairments which  
19 significantly limits [his or her] physical or mental ability to do basic work  
20 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);

1 416.920(c). If the claimant's impairment does not satisfy this severity threshold,  
2 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.  
3 §§ 404.1520(c); 416.920(c).

4 At step three, the Commissioner compares the claimant's impairment to  
5 severe impairments recognized by the Commissioner to be so severe as to preclude  
6 a person from engaging in substantial gainful activity. 20 C.F.R. §§  
7 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more  
8 severe than one of the enumerated impairments, the Commissioner must find the  
9 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

10 If the severity of the claimant's impairment does not meet or exceed the  
11 severity of the enumerated impairments, the Commissioner must pause to assess  
12 the claimant's "residual functional capacity." Residual functional capacity (RFC),  
13 defined generally as the claimant's ability to perform physical and mental work  
14 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§  
15 404.1545(a)(1); 416.945(a)(1), is relevant to both the fourth and fifth steps of the  
16 analysis.

17 At step four, the Commissioner considers whether, in view of the claimant's  
18 RFC, the claimant is capable of performing work that he or she has performed in  
19 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv); 416.920(a)(4)(iv).  
20 If the claimant is capable of performing past relevant work, the Commissioner

1 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f); 416.920(f).

2 If the claimant is incapable of performing such work, the analysis proceeds to step  
3 five.

4 At step five, the Commissioner considers whether, in view of the claimant's  
5 RFC, the claimant is capable of performing other work in the national economy.  
6 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,  
7 the Commissioner must also consider vocational factors such as the claimant's age,  
8 education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v);  
9 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the  
10 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
11 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other  
12 work, analysis concludes with a finding that the claimant is disabled and is  
13 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1); 416.920(g)(1).

14 The claimant bears the burden of proof at steps one through four above.  
15 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to  
16 step five, the burden shifts to the Commissioner to establish that (1) the claimant is  
17 capable of performing other work; and (2) such work "exists in significant  
18 numbers in the national economy." 20 C.F.R. §§ 404.1560(c)(2); 416.920(c)(2);  
19 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).



1 A finding of “disabled” does not automatically qualify a claimant for  
2 disability benefits. *Bustamante v. Massanari*, 262 F.3d 949, 954 (9th Cir. 2001).  
3 When there is medical evidence of drug or alcohol addiction (“DAA”), the ALJ  
4 must determine whether the DAA is a material factor contributing to the disability.  
5 20 C.F.R. §§ 404.1535(a), 416.935(a). It is the claimant’s burden to prove  
6 substance addiction is not a contributing factor material to her disability. *Parra v.*  
7 *Astrue*, 481 F.3d 742, 748 (9th Cir. 2007).

### 8 **ALJ’S FINDINGS**

9 At step one, the ALJ found Plaintiff has not engaged in substantial gainful  
10 activity since April 23, 1998, the alleged onset date. Tr. 25. At step two, the ALJ  
11 found Plaintiff has the following severe impairments: drug and alcohol abuse,  
12 schizoaffective disorder, anxiety disorder, and bipolar disorder. Tr. 25. At step  
13 three, the ALJ found that Plaintiff’s impairments, including the substance use  
14 disorder, meet sections 12.04, 12.06, and 12.09 of 20 C.F.R. Part 404, Subpt. P,  
15 App’x 1. Tr. 25. However, the ALJ found that if Plaintiff stopped the substance  
16 use, she would continue to have severe impairments or combination of  
17 impairments at step two, but the impairments would not meet or medically equal  
18 the severity of a listed impairment at step three. Tr. 30. The ALJ then determined  
19 that if the Plaintiff stopped the substance use, she would have the RFC “to perform  
20 a full range of work at all exertional levels but with the following nonexertional

1 limitations: (1) The claimant is limited to simple, repetitive tasks typical of  
2 occupations with an svp level of 1 or 2; and (2) the claimant should have only  
3 superficial contact with coworkers.” Tr. 31. At step four, the ALJ found that  
4 Plaintiff has no past relevant work. Tr. 34. At step five, the ALJ found that if  
5 Plaintiff stopped substance abuse, considering Plaintiff’s age, education, work  
6 experience, and RFC, there are jobs that exist in significant numbers in the national  
7 economy that Plaintiff can perform, such as floor cleaner, janitor, and hand  
8 laundry. Tr. 34. Finally, the ALJ found that substance use disorder is a  
9 contributing factor material to the determination of disability because Plaintiff  
10 would not be disabled if she stopped the substance use. Tr. 35. Thus, the ALJ  
11 concluded that Plaintiff has not been disabled within the meaning of the Social  
12 Security Act at any time from the alleged onset date through the date of the  
13 decision. Tr. 35.

## 14 ISSUES

15 Plaintiff seeks judicial review of the Commissioner’s final decision denying  
16 her disability benefits under Title II and supplemental security income benefits  
17 under Title XVI of the Social Security Act. ECF No. 14. Plaintiff raises the  
18 following issues for this Court’s review:

- 19 1. Whether the ALJ erred by finding substance use was a factor material to the  
20 finding of disability; and

2. Whether the ALJ erred by failing to develop the record.

## DISCUSSION

### A. DAA Analysis

A social security claimant is not entitled to benefits “if alcoholism or drug addiction would ... be a contributing factor material to the Commissioner's determination that the individual is disabled.” 42 U.S.C. § 423(d)(2)(C), 1382c(a)(3)(J). Therefore, when there is medical evidence of drug or alcohol addiction, the ALJ must conduct a DAA analysis and determine whether drug or alcohol addiction is a material factor contributing to the disability. 20 C.F.R. §§ 404.1535(a), 416.935(a). In order to determine whether drug or alcohol addiction is a material factor contributing to the disability, the ALJ must evaluate which of the current physical and mental limitations would remain if the claimant stopped using drugs or alcohol, then determine whether any or all of the remaining limitations would be disabling. 20 C.F.R. §§ 404.1535(b)(2), 416.935(b)(2). If the remaining limitations without DAA would still be disabling, then the claimant's drug addiction or alcoholism is not a contributing factor material to his disability. If the remaining limitations would not be disabling without DAA, then the claimant's substance abuse is material and benefits must be denied. *Parra v. Astrue*, 481 F.3d 742, 747-48 (9th Cir. 2007). “The claimant bears the burden of

1 proving that drug or alcohol addiction is not a contributing factor material to his  
2 disability.” *Id.* at 748.

3 Here, the ALJ found substance use disorder is a contributing factor material  
4 to the determination of disability because Plaintiff would not be disabled if she  
5 stopped substance use. Tr. 32-35. Plaintiff generally contends that the ALJ’s  
6 materiality finding was not supported by substantial evidence in accordance with  
7 Social Security Ruling (“SSR”) 13-2p, which explains the Commissioner’s policy  
8 on “the analysis of substance abuse (or “DAA”) in a case involving co-occurring  
9 mental disorders.” ECF No. 14 at 10-12 (citing SSR 13-2p (February 20, 2013),  
10 *available at* 2013 WL 621536). SSR 13-2p directs, in pertinent part, that the ALJ  
11 consider periods of abstinence from drug and alcohol use that are

12 long enough to allow the acute effects of drug and alcohol use to abate.  
13 Especially in cases involving co-occurring mental disorders, the  
14 documentation of a period of abstinence should provide information about  
15 what, if any, medical findings and impairment-related limitations remained  
16 after the acute effects of drug and alcohol use abated. Adjudicators may  
17 draw inferences from such information based on the length of the period(s),  
how recently the period(s) occurred, and whether the severity of the co-  
occurring impairment(s) increased after the period(s) of abstinence ended.  
To find that DAA is material, we must have evidence in the case record  
demonstrating that any remaining limitations were not disabling during the  
period.

18 SSR 13-2p at \*12. Further, SSR 13-2p directs that “[w]e will find that DAA is not  
19 material to the determination of disability and allow the claim if the record is fully  
20 developed and the evidence does not establish that the claimant’s co-occurring

1 mental disorders would improve to the point of nondisability in the absence of  
2 DAA.” SSR 13-2p at \*9.

3 As an initial matter, and as instructed by SSR 13-2p, the ALJ properly relies  
4 on evidence gathered from Plaintiff’s undisputed period of sobriety beginning  
5 October 29, 2013, and extending through the date of the hearing. Tr. 32, 78.  
6 Plaintiff agrees that she “has had a long period of sobriety, offering a good  
7 opportunity to establish the effect of substance abuse on her other disorders.” ECF  
8 No. 14 at 12. However, Plaintiff argues that the ALJ improperly “based his finding  
9 that substance abuse is material to [Plaintiff’s] disability based entirely on her own  
10 statements, not medical evidence.” *Id.* In support of this argument, Plaintiff cites  
11 medical evidence that could be considered more favorable to her, including: GAF  
12 scores of 45 and below in September 2014, January 2015, and May 2015, which  
13 Plaintiff argues are “unchanged from earlier GAF scores” before Plaintiff’s period  
14 of sobriety; Plaintiff’s report in September 2014 that she has “down days” during  
15 which she spends most of her time in bed; and her report in May 2015 that she had  
16 a three week period of depression that was “unusually long.” ECF No. 14 at 13-14  
17 (citing Tr. 868, 871, 913, 930-32). However, the ALJ did consider the evidence  
18 cited by Plaintiff, along with her reports during the same relevant time period that  
19 she is happy, cleans, works in her yard, is out in the community, does not hear  
20 voices since not using drugs, has restful sleep, and “is very proud of the person she

1 has become in recovery.” Tr. 33, 868-69. In January 2015, Plaintiff reported that  
2 her mental health was stable and her stress was low; and Plaintiff’s mental health  
3 provider did not schedule therapy because only “a change to medication  
4 management” was warranted. Tr. 909-11. Moreover, the ALJ relied on Plaintiff’s  
5 own testimony, confirmed by the record, that she has had only minimal mental  
6 health treatment since becoming sober and takes medication for her mental health,  
7 which indicates that she is able to “function fairly well.” Tr. 32. Finally, even if  
8 selected medical evidence in this case may be interpreted more favorably to the  
9 Plaintiff, it is susceptible to more than one rational interpretation, and therefore the  
10 ALJ’s conclusion must be upheld. *See Burch*, 400 F.3d at 679. For all of these  
11 reasons, the ALJ reasonably found that the “limited objective medical evidence in  
12 the record since [Plaintiff’s] date of sobriety indicates that when she is not using  
13 drugs and alcohol, and is compliant with treatment, she is able to function at the  
14 [RFC] outlined” in the decision. Tr. 33.

15 Plaintiff additionally argues that the ALJ improperly relied on her testimony  
16 at the hearing as part of the materiality analysis. ECF No. 14 at 14-15. Here,  
17 Plaintiff testified that she would accept a full time job as a janitor if it was  
18 available in her town, but she didn’t have a car and does not like to work around “a  
19 bunch of people.” Tr. 80-81. The ALJ also noted that Plaintiff appeared “candid,  
20 calm, and appropriately interactive” at the hearing; she was appropriately dressed;

1 and she testified that she has developed a deep religious belief, goes to church, is  
2 involved in prayer group twice a week, lives with her 13 year old son and ex-  
3 husband, takes care of her son, does housework and cooks, reads the Bible, and  
4 works part time cleaning her church and another house. Tr. 32, 74-82. The ALJ  
5 accorded Plaintiff's testimony great weight and found it "supports the conclusion  
6 that [Plaintiff] functions at a significantly higher level when she is not using drugs  
7 and alcohol, and would be able to work at the [assessed RFC]." Plaintiff argues  
8 that the ALJ erred in granting Plaintiff's testimony great weight because  
9 "[a]lthough [she] appeared to be functioning well on the day of her hearing,  
10 [Plaintiff's] medical records indicate that her presentation at times is much  
11 different when she is experiencing one of 'lows,' consistent with the waxing and  
12 waning of bipolar symptoms." ECF No. 14 at 14. However, as noted above, the  
13 ALJ considered the *content* of Plaintiff's testimony, in addition to her demeanor at  
14 the hearing, as supportive of the conclusion that Plaintiff functions at a higher level  
15 when she is not using drugs and alcohol. Tr. 32. Moreover, the ALJ found bipolar  
16 disorder was a severe impairment at step two, and despite Plaintiff's arguments to  
17 the contrary, the ALJ did consider medical evidence of "waxing and waning of  
18 symptoms" as part of the DAA analysis, including Plaintiff's reported "highs" of  
19 four to seven days, and "downs" that can last up to three days. Tr. 33 (citing Tr.  
20 868). For these reasons, the Court finds no error in the ALJ's consideration of

1 Plaintiff's demeanor and testimony at the hearing as part of the DAA analysis. *See*  
2 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995) (“[t]he ALJ is responsible  
3 for determining credibility”); *see also Smolen v. Chater*, 80 F.3d 1273, 1284 (9th  
4 Cir.1996) (in evaluating the credibility of symptom testimony, the ALJ may utilize  
5 ordinary techniques of credibility evaluation).

6 Finally, the ALJ found that “since [Plaintiff] has been clean and sober, her  
7 activities of daily living have been wide,” including: personal grooming, cooking,  
8 shopping, doing dishes and laundry, taking care of her dogs, helping care for her  
9 son, doing yard work, going to church and prayer group regularly, reading the  
10 Bible, playing board games with family, and working part-time cleaning her  
11 church and another house. Tr. 33, 70, 74-78. Plaintiff does not specifically  
12 address or challenge this finding. *Carmickle v. Comm’r of Soc. Sec. Admin.*, 533  
13 F.3d 1155, 1161 n.2 (9th Cir. 2008) (the Court may decline to address this issue as  
14 it was not raised with specificity in Plaintiff’s briefing). It was reasonable for the  
15 ALJ to find that Plaintiff’s “activities of daily living since being clean and sober  
16 also support the conclusion that [she] is able to return to work at the [assessed  
17 RFC].” Tr. 33.

18 Based on the foregoing, the conclusion that Plaintiff’s co-occurring mental  
19 disorders had improved to the point of nondisability in the absence of substance  
20 use, as directed by SSR 13-2p, was supported by substantial evidence, including:



1 Plaintiff's "treatment course and daily activities," objective medical evidence, and  
2 her own testimony particularly as regards her ability to work full time. Tr. 32-35.  
3 Thus, the ALJ did not err in finding Plaintiff's "substance use disorder is a  
4 contributing factor material to the determination of disability because [Plaintiff]  
5 would not be disabled if she stopped the substance use." Tr. 35.

### 6 **B. Duty to Develop the Record**

7 "An ALJ's duty to develop the record is triggered only when there is  
8 ambiguous evidence or when the record is inadequate to allow for proper  
9 evaluation of the evidence." *Mayes v. Massanari*, 276 F.3d 453, 459-60 (9th Cir.  
10 2001). Plaintiff argues that the record "was clearly inadequate to allow for a  
11 materiality analysis" in this case because of the lack of medical treatment during  
12 the period of sobriety, and Plaintiff's failure to appear at a consultative  
13 examination because "both Social Security and [her] representative had lost  
14 contact with her." ECF No. 14 at 15-16. However, the ALJ specifically  
15 acknowledged that "[t]here is little current medical evidence of record to evaluate  
16 due to the minimal treatment [Plaintiff] has sought since being sober.  
17 Additionally, [Plaintiff] was schedule to be examined by ... a consultative  
18 examiner, in October of 2014, but failed to appear. However, [Plaintiff's]  
19 statements clearly indicate she has been able to work and is highly functional since  
20 becoming clean and sober." Tr. 32 (citing Tr. 707).

1 As noted above, it is Plaintiff's burden to prove substance addiction is not a  
2 contributing factor material to her disability. *Parra*, 481 F.3d at 748. This burden  
3 cannot be shifted to the ALJ simply by virtue of the ALJ's duty to develop the  
4 record. *See Mayes*, 276 F.3d at 459-60. Here, as discussed in detail above, the  
5 ALJ supported the DAA analysis with substantial evidence from Plaintiff's lengthy  
6 period of sobriety, including: objective medical evidence; Plaintiff's "treatment  
7 course and daily activities;" and Plaintiff's own testimony, including her ability to  
8 work full-time with certain restrictions. Tr. 32-35. The ALJ did not find, and the  
9 Court is unable to discern, any inadequacy or ambiguity that did not allow for  
10 proper evaluation of the record as a whole. *See Bayliss*, 427 F.3d at 1217. Thus,  
11 the ALJ did not err in failing to further develop the record in this case.

## 12 CONCLUSION

13 A reviewing court should not substitute its assessment of the evidence for  
14 the ALJ's. *Tackett*, 180 F.3d at 1098. To the contrary, a reviewing court must  
15 defer to an ALJ's assessment as long as it is supported by substantial evidence. 42  
16 U.S.C. § 405(g). As discussed in detail above, the ALJ's finding that Plaintiff's  
17 substance use was material to the determination of disability was supported by  
18 substantial evidence; and the ALJ did not err in his duty to develop the record.  
19 After review the court finds the ALJ's decision is supported by substantial  
20 evidence and free of harmful legal error.

1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Summary Judgment, ECF No. 14, is **DENIED**.

3 2. Defendant's Motion for Summary Judgment, ECF No. 16, is

4 **GRANTED.**

5 The District Court Executive is hereby directed to enter this Order and  
6 provide copies to counsel, enter judgment in favor of the Defendant, and **CLOSE**  
7 the file.

8 **DATED** April 11, 2018.

9 *s/Fred Van Sickle*  
10 Fred Van Sickle  
Senior United States District Judge